

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

<b>IN RE:</b>	)	
	)	
<b>WENDY SUE CARPENTER,</b>	)	<b>Case No. 02-12581</b>
	)	<b>Chapter 7</b>
	)	
<b>Debtor.</b>	)	
_____	)	

**MEMORANDUM OPINION AND ORDER**

The chapter 7 trustee objects to the debtor's claimed exemption of a 1993 Peterbilt tractor truck as her "means of conveyance" under KAN. STAT. ANN. § 60-2304(c) (1994). The Court heard evidence on February 4, 2003 and took the matter under advisement. This case appears to be one of first impression. The Court's independent research disclosed no reported cases involving a similar fact pattern with an exemption statute as that found in Kansas.

Wendy Sue Carpenter filed this chapter 7 case on June 3, 2002. D. Michael Case was appointed trustee. Debtor is, by trade, an over-the-road truck driver. She is an owner-operator of a 1993 Peterbilt tractor which she uses in her work. Debtor also owns a 1994 Chevrolet Blazer which is heavily encumbered. Debtor claimed the Peterbilt exempt on Schedule C and valued it at \$13,000. The trustee filed a timely objection to this exemption.<sup>1</sup>

Debtor has been "employed" for seven years by M. Bruenger & Sons, a Wichita trucking concern. Bruenger hires debtor to haul loads, usually to Florida, with a return load back to Oklahoma or the Wichita area. Most of her trips involve six-to-eight day runs. According to her testimony, debtor "leases" her tractor to Bruenger. When not driving it, debtor maintains and parks her tractor

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<sup>1</sup> No issue is raised by the trustee as to the debtor's claimed value of the Peterbilt.

(without the trailer) at her home. When she has a load to haul, debtor drives her tractor to the Bruenger depot where she picks up a trailer load for transport. Debtor is, by her own account, physically incapable of loading and unloading trailers due to a previous back injury. Because debtor is an owner-operator she is not required to load and unload the trailers. Were debtor to lose the Peterbilt, she would likely lose her job.

Debtor uses her Blazer for driving around town and personal errands, although she states that from about July through December of 2002, her Blazer was inoperable and she used the Peterbilt for that purpose. Debtor could have exempted her Blazer as a “means of conveyance,” but it is fully encumbered.

At issue here is whether debtor may exempt the Peterbilt tractor as a “means of conveyance” under the Kansas exemption statute. KAN. STAT. ANN. § 60-2304(c) (1994) provides:

Every person residing in this state shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state . . . (c) Such person’s interest, not to exceed \$20,000 in value, in one means of conveyance *regularly used for the transportation of the person or for transportation to and from the person’s regular place of work* . . .

(Emphasis added.).

The trustee has the burden to prove that the Peterbilt is neither regularly used for transportation by the debtor nor used for transport to and from the debtor’s work.<sup>2</sup> In this case, the tractor is not only the debtor’s means of transportation to and from work, it *is* her regular place of work. The trustee argues that the debtor should not be allowed to claim this vehicle exempt as a “means of conveyance” because it is more appropriately classified as a tool of the trade under KAN. STAT. ANN. § 60-2304(e)

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<sup>2</sup> Fed. R. Bankr. P. 4003(c).

(1994).<sup>3</sup> If the trustee is correct, the debtor can only exempt \$7,500 in the value of the truck, leaving the trustee with \$5,500 for the benefit of the estate. The debtor counters that she is not disqualified from exempting the Peterbilt as a means of conveyance just because the tractor may also qualify as an exempt tool of the trade.

A look at the history of Kansas' means of conveyance exemption sheds some light on this issue. From the time of the first enactment in 1868<sup>4</sup> until 1965, Kansas has recognized personal property exemptions in various items. As codified in 1923, a Kansas resident who was the head of a household could exempt "... one yoke of oxen, and one horse or mule, or [in lieu thereof] a span of horses or mules . . ."<sup>5</sup> A separate personal property exemption for "one wagon, cart or dray" was also allowed.<sup>6</sup> Finally, a debtor could exempt the necessary tools of his trade or business.<sup>7</sup> In 1963, the personal property exemption statute was renumbered and recodified from § 60-3504 to § 60-2304, but its language was retained.<sup>8</sup>

In 1965, the language and concept of "means of conveyance" was first introduced into Kansas' exemption statute and the former provisions concerning oxen, horses, mules, and wagons were

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<sup>3</sup> In Kansas, a tool of the trade exemption is available for "... tools, implements and equipment . . ., or the other tangible means of production regularly and reasonably necessary in carrying on the person's profession, trade, business or occupation in an aggregate value not to exceed \$7,500."

<sup>4</sup> KAN. GEN. STAT. 1868, ch. 38.

<sup>5</sup> KAN. REV. STAT. ANN. § 60-3504 *Fifth* (1923).

<sup>6</sup> KAN. REV. STAT. ANN. § 60-3504 *Sixth* (1923).

<sup>7</sup> KAN. REV. STAT. ANN. § 60-3504 *Eighth* (1923).

<sup>8</sup> 1963 KAN. SESS. LAWS, ch. 303.

dropped.<sup>9</sup> KAN. GEN. STAT. § 60-2304 (1963) was repealed and replaced by a version very similar to that which is in force today.<sup>10</sup> Other than minor changes, the means of conveyance exemption has remained largely unaltered since 1965.<sup>11</sup>

It was not always clear that a debtor could exempt a “means of conveyance” if that item was neither a farming implement nor a tool of the trade. The cases applying § 60-3504 and its predecessors reveal the Kansas Supreme Court’s effort to reconcile the needs of individuals for transportation with both the changing nature of life in Kansas and the methods of transit. Initially, in *Gordon v. Shields*,<sup>12</sup> the Supreme Court refused to find that a buggy primarily used for passenger transportation was exempt as a wagon under the sixth clause of the statute. In *Gordon*, the court opined that the “wagon” exemption was designed to protect the farmer and “to secure to him his implements of husbandry.”<sup>13</sup> According to Justice Brewer, only wagons adapted to farming purposes were subject to exemption; wagons adapted to carry persons were not.

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<sup>9</sup> 1965 KAN. SESS. LAWS, ch. 357, § 1.

<sup>10</sup> KAN. GEN. STAT. § 60-2304(2), as amended, provided: “One means of conveyance regularly used for the transportation of the family or for his [head of a family] transportation to and from his regular place of work.” A tools of the trade exemption was retained in subparagraph (4) with a \$5,000 limit.

<sup>11</sup> In 1970, the statute’s subparts were renumbered. *See* 1970 KAN. SESS. LAWS, ch. 242, § 1. In 1980, the exemption statute removed the language referring to transportation of the “family” and replaced it with “person.” *See* 1980 KAN. SESS. LAWS, ch. 176, § 4. In 1987, the statute’s subparts were again changed with the subparts being changed from numbers to letters. *See* 1987 KAN. SESS. LAWS, ch. 225, § 3. Finally, the last amendment to the statute in 1988 added the \$20,000 limit on the means of conveyance exemption. *See* 1988 KAN. SESS. LAWS, ch. 217, § 2.

<sup>12</sup> 7 Kan. 320 (1871).

<sup>13</sup> *Id.* at 325.

In 1889, in *Wilhite v. Williams*,<sup>14</sup> the court considered the possible exemption of a horse and buggy used by an insurance salesman in his business. This time the court determined that the horse was exempt under the fifth clause of the statute and that the buggy was exempt under the eighth clause pertaining to tools of the trade. The court distinguished *Gordon* by noting that in the former case, the debtor did not specify the eighth clause as the statutory basis for exempting the buggy, but relied solely upon the sixth clause. Thus, the *Gordon* court did not consider whether the buggy was exempt as a tool of the trade under the eighth clause. *Wilhite* suggests, implicitly, that a particular item of property may be exempt under multiple categories of exemption.

After the turn of the twentieth century, the court had a number of opportunities to apply the archaic language of KAN. REV. STAT. ANN. § 60-3504 (1923) to the advancing automobile. In *Dowd v. Heuson*,<sup>15</sup> an automobile owned by a construction foreman and used in his daily work as well as in transporting him to and from work was deemed an exempt tool of the trade under the eighth clause of § 60-3504.<sup>16</sup> The court there stated that occasional use of the vehicle for purposes other than work did not render it ineligible for the tool of trade exemption. This rule survives to the present day.<sup>17</sup>

In 1936, it was again suggested that a vehicle may be capable of multiple exemption

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<sup>14</sup> 41 Kan. 288, 21 Pac. 256 (1889).

<sup>15</sup> 122 Kan. 278, 252 Pac. 260 (1927).

<sup>16</sup> See also, *Wickham v. Bank*, 95 Kan. 657, 659, 149 Pac. 433 (1915), *reh. denied* 96 Kan. 350, 150 Pac. 513 (1915).

<sup>17</sup> See KAN. STAT. ANN. § 60-2304(e) where language reads “regularly and reasonably necessary in carrying on the person’s . . . trade.” See also *In re Kobs*, 163 B.R. 368 (Bankr. D. Kan. 1994); *In re Currie*, 34 B.R. 745 (D. Kan. 1983); *In re Rice*, 35 B.R. 431 (Bankr. D. Kan. 1982).

classifications in *Foster v. Foster*.<sup>18</sup> There the Supreme Court determined that an automobile was exempt under the “wagon” language contained in KAN. REV. STAT. ANN. § 60-3504 *Sixth* (1923), implicitly reversing *Gordon*. In *Foster*, the debtor was employed as a hotel clerk who used the vehicle to travel to and from work. The Court held that the vehicle was also an exempt tool of the trade under the eighth clause of § 60-3504 where the debtor had no other means of transportation, was injured, and required transportation to and from his employment.<sup>19</sup>

The cases the trustee relies upon, and in particular *In re Kobs*,<sup>20</sup> merely hold that a vehicle may be claimed exempt as a tool of the trade when the vehicle is used in the debtor’s work. In *Kobs*, for instance, the debtor was a farmer who required a pickup truck for his operation. Judge Flannagan held that, in certain circumstances, a farm pickup could be a tool of the trade.<sup>21</sup>

None of the modern cases applying § 60-2304 limits the debtor’s ability to elect among the available exemptions. The older cases decided under former § 60-3504, while not directly addressing the point, admit the possibility that an item of property may be exempt under more than one

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<sup>18</sup> 144 Kan. 528, 61 P.2d 1350 (1936).

<sup>19</sup> *Id.* at 533.

<sup>20</sup> 163 B.R. 368 (Bankr. D. Kan. 1994).

<sup>21</sup> *Kobs* is also noteworthy here, because the bankruptcy court concluded that the debtor could exempt a pickup truck as a tool of the trade while exempting a car as a means of conveyance, without duplicating exemptions. As long as the applicable exemption requirements are met, a debtor is not precluded from exempting more than motor vehicle. Thus, *Kobs* again suggests that property, and specifically vehicles, may qualify for more than one type of exemption classification. See 163 B.R. at 372. See also, *In re Van Winkle*, 265 B.R. 247 (Bankr. D. Colo. 2001) (Debtor truck driver could claim commercial truck exempt as tool of trade and was not limited to specific exemption for motor vehicles.).

classification.<sup>22</sup> This is consistent with the traditionally liberal construction of the Kansas exemption scheme.<sup>23</sup>

In this case, the debtor has not sought to stack her exemptions by claiming the Blazer *and* the Peterbilt as her “means of conveyance.”<sup>24</sup> She is prepared to lose the Blazer. But if she loses the Peterbilt, she will likely lose her employment. While the truck may well qualify as a tool of the trade, this Court cannot say that the debtor’s choice of exemption classification must be restricted to that category when the vehicle, as used in this case, also clearly fits into the statutory definition of a means of conveyance. The facts and equities in this case weigh heavily in favor of the debtor.

Under either a literal or liberal interpretation of KAN. STAT. ANN. § 60-2304(c), the Peterbilt is a “means of conveyance.” The debtor uses it for the “transportation of the person” as well as “transportation to and from [her] regular place of work.”

The trustee’s objection to the exemption of the 1993 Peterbilt under KAN. STAT. ANN. § 60-2304(c) (1994) is **OVERRULED**.

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<sup>22</sup> Research revealed one bankruptcy court case in the country addressing multiple classifications of exemptions in vehicles. In *In re Branas*, 143 B.R. 64 (Bankr. W.D. Pa. 1992), the bankruptcy court determined that a farm tractor could be exempted both as a motor vehicle under §522(d)(2) and a tool of the trade under §522(d)(6). The court there reasoned that since a tractor met the Pennsylvania state statutory definition of a vehicle, it could be exempted as such. This Court expresses no opinion about the exemption “stacking” permitted by the *Branas* court and that issue is not presented in the instant case.

<sup>23</sup> See *Nohinek v. Logsdon*, 6 Kan. App. 2d 342, 344, 628 P.2d 257 (1981).

<sup>24</sup> Nor does the statute permit debtor to claim exempt more than one means of conveyance. See KAN. STAT. ANN. § 60-2304(c) (1994).

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF KANSAS  
In re: Wendy Sue Carpenter; Case No. 02-12581-7  
**Memorandum Opinion and Order**

Dated this 21<sup>st</sup> day of February, 2003.

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ROBERT E. NUGENT,  
CHIEF BANKRUPTCY JUDGE  
UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS



IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF KANSAS  
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**Memorandum Opinion and Order**

**CERTIFICATE OF SERVICE**

The undersigned certifies that copies of the **Memorandum Opinion and Order** were deposited in the United States mail, postage prepaid on this 21<sup>st</sup> day of February, 2003, to the following:

Jeff Dewey  
Dewey and Lund, L.L.P.  
1010 N. Main  
P.O. Box 635  
Wichita, KS 67201

D. Michael Case  
150 N. Main, Suite 400  
Wichita, KS 67202

Wendy S. Carpenter  
2030 E. 53<sup>rd</sup> St. South  
Wichita, KS 67216

U.S. Trustee  
500 Epic Center  
301 N. Main  
Wichita, KS 67202

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Janet Swonger  
Judicial Assistant